

JINA L. CHOI (N.Y. Bar No. 2699718)
ROBERT L. TASHJIAN (Cal. Bar No. 191007)
tashjianr@sec.gov
STEVEN D. BUCHHOLZ (Cal. Bar No. 202638)
buchholzs@sec.gov

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
44 Montgomery Street, Suite 2800
San Francisco, California 94104
Telephone: 415-705-2500
Facsimile: 415-705-2501

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JSW FINANCIAL INC., JAMES S. WARD,
DAVID S. LEE, EDWARD G. LOCKER,
RICHARD F. TIPTON, and DAVID C. LIN,

Defendants,

and

BLUE CHIP REALTY FUND LLC and
SHORELINE INVESTMENT FUND, LLC,

Relief Defendants.

Case No. 3:11-cv-01356 WHA

**MOTION TO LIFT STAY AND
[PROPOSED] ORDER**

MOTION TO LIFT STAY

Pursuant to the Court’s Order dated July 22, 2011, plaintiff Securities and Exchange Commission (the “Commission”) hereby moves to lift the stay of proceedings. By way of background, the Commission filed this action on March 22, 2011, alleging six defendants, JSW Financial Inc. (“JSW Financial”), James S. Ward, David S. Lee, Edward G. Locker, Richard F. Tipton, and David C. Lin, violated the federal securities laws, and naming two relief defendants, Blue Chip Realty Fund LLC (“Blue Chip”) and Shoreline Investment Fund, LLC (“Shoreline”).

Three months later, the United States Government filed an indictment charging four of the same defendants, Lin, Locker, Tipton, and Ward, with 18 counts of mail fraud, wire fraud, and conspiracy. *See United States v. Tipton, et al.*, Case No. 11-CR-0393 TEH (N.D. Cal. filed June 22, 2011). The Court declined to relate this civil action with the criminal matter. *See* Dkt. 32.

Defendant Ward filed an Answer in this action on June 11, 2011. *See* Dkt. 25. On July 6, 2011, the Trustee acting on behalf of defendant JSW Financial informed the Court that it had filed for bankruptcy. *See* Dkt. 28 (citing Case No. 09-57648 SLJ (N.D. Cal.)). The Court, at the Trustee’s request, entered a stay of proceedings. *See* Dkt. 29 (imposing stay against all defendants). The Court ordered the Commission to file a request to lift the stay within 30 days of “final resolution of the bankruptcy action.” *See id.*

In the parallel criminal matter, three of the four defendants—Locker, Tipton, and Ward—subsequently pleaded guilty. *See Tipton, supra*, Case No. 11-CR-0393 TEH, Dkts. 35-37 (plea agreements). The remaining defendant, Lin, was found guilty after trial. *See id.* Dkt. 108 (verdict). The Court entered final judgments against the four defendants in February 2013, sentencing them to time in prison and ordering them to pay restitution. *See id.* Dkt. 181 (ordering all defendants jointly and severally liable to pay more than \$8.6 million in restitution); Dkt. 190 (sentencing Ward to 60 months in custody); Dkt. 191 (sentencing Locker to 30 months); Dkt. 192 (sentencing Tipton to 18 months); Dkt. 193 (sentencing Lin to 28 months).

The JSW Financial bankruptcy action continued during the pendency of the criminal matter. Ward filed for bankruptcy in January 2012. *See* Dkt. 33 (referring to Case No. 12-50020 JEH (S.D.

1 Ohio)). In July 2013, Lee filed his own bankruptcy petition. *See* Case No. 13-54056 AJ (N.D. Cal.).
2 JSW Financial was discharged from bankruptcy on September 28, 2015. *See* Case No. 09-57648
3 SLJ, Dkt. 445 (final decree). Ward's bankruptcy proceedings have also been terminated. *See* Case
4 No. 12-50020 JEH (minute entry dated June 12, 2014). Defendant Lee's bankruptcy petition is still
5 pending.

6 In this action, the Commission reached resolutions with four of the six defendants and the two
7 relief defendants. *See* Dkts. 40-51. The Court entered final judgments against the settling defendants
8 on January 20, 2016. *See* Dkts. 53-58 (entering judgments against defendants Lee, Lin, Locker, and
9 Tipton, and relief defendants Blue Chip and Shoreline). The same day, the Commission filed a notice
10 of voluntary dismissal of the claims against defendant JSW Financial. *See* Dkt. 59.

11 Only defendant Ward, who is serving his sentence in custody, now remains as a defendant in
12 this matter. Commission Staff has spoken with his attorney of record, David M. McKim, who has
13 not been in contact with Ward for several years. *See* Buchholz Decl. ¶ 2 (filed concurrently). With
14 counsel's permission, the Commission has been serving Ward with the filings in this matter by mail.
15 *See, e.g.*, Dkt. 52 (certificate of service); Buchholz Decl. ¶ 2. Commission Staff has not received any
16 communications from Ward, who defaulted in an administrative proceeding instituted by the
17 Commission after his criminal conviction to determine whether Ward should be barred from the
18 securities industry. *See* SEC Rel. No. IA-3551, 2013 WL 653015 (Feb. 7, 2013) (order making
19 findings and barring Ward by default); Buchholz Decl. ¶ 3 & Exh. A (attaching copy of order).

20 In light of Ward's guilty plea, the sworn testimony and evidence introduced at his co-
21 defendant Lin's criminal trial, and the evidence gathered in the Commission Staff's pre-filing
22 investigation, the Commission intends to move for summary judgment against Ward. The
23 Commission would be prepared to file its motion within 30 days after the current stay of proceedings
24 is lifted. Entry of judgment against Ward would resolve all remaining claims in this action.

1 Based on the foregoing, the Commission respectfully requests that the Court lift the stay of
2 proceedings so that it may file its proposed motion for summary judgment.

3 Respectfully submitted,

4
5 Dated: January 25, 2016

/s/ Robert L. Tashjian

6 Robert L. Tashjian


7 Attorney for Plaintiff
8 SECURITIES AND EXCHANGE
9 COMMISSION

10 * * *

11 **[PROPOSED] ORDER**

12 Pursuant to its Order dated July 7, 2011, the Court hereby lifts the previously-imposed stay of
13 proceedings.

14
15 **DATED:** January 28, 2016.

16 
17 **WILLIAM ALSUP**
18 **UNITED STATES DISTRICT JUDGE**